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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **TACOMA DIVISION**

10 WILL CO. LTD. a limited liability company
11 organized under the laws of Japan,

12 Plaintiff,

13 vs.

14 KA YEUNG LEE, an individual; YOUHAHA
15 MARKETING AND PROMOTION
16 LIMITED, a foreign company; and, DOES 1-
17 20, d/b/a THISAV.COM,

18 Defendants

Case No. 3:20-cv-05802-BHS

**DECLARATION OF JANUS TAM, ON
BEHALF OF YOUHAHA MARKETING
AND PROMOTION LIMITED, IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS**

19 **DECLARATION OF JANUS TAM, ON BEHALF OF**
20 **YOUHAHA MARKETING AND PROMOTION LIMITED, IN SUPPORT OF**
21 **DEFENDANTS' MOTION TO DISMISS**

22 I, Janus Tam, declare and state as follows:

23 1. My name is Janus Tam, I am over the age of 18 years. I am the Secretary of
24 Defendant Youhaha Marketing and Promotion Limited ("YMP"), a limited company registered
in Hong Kong. (Hong Kong is officially known as the Hong Kong Special Administrative
Region of the People's Republic of China, but hereinafter referred to as "Hong Kong"). YMP is
the owner and operator of the website "ThisAV.com." I make this declaration on behalf of
YMP, based upon personal knowledge and, where applicable, my consultation with other YMP

DECLARATION OF JANUS TAM, ON BEHALF OF YOUHAHA MARKETING AND PROMOTION
LIMITED, IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

1 personnel and my review of business records. All statements contained in this declaration are
2 true and correct to the best of my knowledge. If called as a witness, I could and would testify as
3 to the facts set forth in this declaration.

4 **YMP and the ThisAV.com Website**

5 2. YMP is the owner and operator of the website ThisAV.com.

6 3. YMP operates from, and is completely based out of, Hong Kong.

7 4. ThisAV.com is an adult video website that displays user-generated and uploaded
8 adult videos. Neither YMP nor ThisAV.com create or upload any of the videos of ThisAV.com,
9 rather, all videos on ThisAV.com are uploaded by visitors to the website.

10 5. As of February 23, 2021, there were approximately 221,451 videos uploaded to
11 ThisAV.com.

12 6. Most of the videos uploaded to the site are in the Japanese language. I would
13 estimate approximately 70% of the videos uploaded to ThisAV.com have titles in Japanese.

14 7. The allegedly infringing files referenced in the Complaint in this matter are user
15 generated content – that is, content that was uploaded by users.

16 8. YMP did not upload the allegedly infringing files referenced in the Complaint in
17 this matter; YMP did not direct anyone to upload the files; nor does YMP have any knowledge
18 that anyone on behalf of YMP or ThisAV.com uploaded the allegedly infringing files referenced
19 in the Complaint.

20 9. YMP does not have any commercial relationships with any of the users of
21 Thisav.com and users are not paid for uploading any videos.

22 10. The ThisAV.com website is not “scraping” user information or videos from the
23 websites of other companies.

24 11. The Complaint alleges that someone associated with ThisAV.com manually

1 reviews each video prior to that video being made available to the public on ThisAV.com. This
 2 is incorrect. No one at YMP manually reviews any videos that are uploaded to ThisAV.com,
 3 and no one has done so since at least 2017.

4 **YMP's Lack of Contacts with the United States and Washington**

5 12. YMP does not have any employees who have ever visited the United States,
 6 including Washington, for business purposes related to YMP.

7 13. The ThisAV.com website is operated wholly outside of the United States and is
 8 entirely operated in and from Hong Kong.

9 14. ThisAV.com's servers are hosted with GorillaServers, Inc., based in Ogden, Utah.
 10 The main reason that ThisAV.com utilizes GorillaServers, Inc. is because it provides excellent
 11 connectivity to Japan, Taiwan, and Hong Kong. The vast majority of ThisAV.com's users reside
 12 in these three jurisdictions.

13 15. On behalf of YMP, a YMP representative obtained the hosting services as
 14 described above for ThisAV.com from his workspace in Hong Kong.

15 16. ThisAV.com utilizes Cloudflare.com ("Cloudflare") for domain name resolution
 16 services and DDoS (distributed denial of services attack) protection. The service provided by
 17 Cloudflare is automatic and was obtained by YMP for ThisAV.com by a YMP representative
 18 accessing Cloudflare's self-service website from his workspace in Hong Kong. To the extent
 19 that Cloudflare uses US servers in respect to ThisAV.com, it is not at the direction of YMP, and
 20 rather must be the result of Cloudflare's own internal deliberation or process.

21 17. Cloudflare does not provide an account manager for ThisAV.com's account.

22 18. The Terms and Conditions for ThisAV.com do not, and have never, stated that
 23 they are governed by or construed under the laws of Washington and/or the United States.

24 19. YMP has not contracted (either directly or through brokers) with United States

1 advertisers for the ThisAV.com website.

2 20. YMP has a direct contract with the following advertising brokers in respect to
3 advertisements on ThisAV.com: Tiger Media Inc. d/b/a JuicyAds, which is a Canadian
4 corporation registered in the province of Saskatchewan; Tomksoft S.A. d/b/a PopAds, which is a
5 Costa Rican joint stock company; and ExoClick, S.L. d/b/a ExoClick.com which is a Spanish
6 company based in Barcelona. These agreements were all reached by a YMP representative from
7 his workspace in Hong Kong.

8 21. YMP previously had an agreement with another advertising broker in respect to
9 advertisements on ThisAV.com, Mediatick Solutions, Inc., which I believe was a company
10 based in Quebec, Canada, but YMP has no relationship with this company as of April 2020.

11 22. YMP also made an advertising agreement with a direct buyer from Hong Kong
12 who placed an advertisement on ThisAV.com, but this advertisement was in no way directed to
13 the United States.

14 23. YMP does not have employees who travel to the United States in general, or
15 Washington in particular, to conduct business.

16 24. YMP does not have employees, nor offices in the United States (including
17 Washington).

18 25. YMP does not have a bank account in the United States.

19 26. YMP has never owned nor leased real estate in the United States (including
20 Washington).

21 27. YMP has never paid taxes in the United States (including Washington).

22 28. YMP does not contract (nor has ever contracted) with Washington based
23 companies or individuals to deliver content for the ThisAV.com website.

24 29. YMP does not specifically target internet users in the United States (including

1 Washington) for the ThisAV.com website.

2 30. To the extent that it could even do so, YMP does not aim the ThisAV.com
3 website at any particular country, but rather the website is aimed at the entire world of internet
4 users.

5 31. ThisAV.com uses a website template and source code provided from a website
6 www.mediagxxxscript.com (“Mediagxxx”) to create the general layout of its website. I understand
7 that the Mediagxxx website shut down approximately two years ago and is no longer available at
8 this web address. I do not recall what the name of this company was that owned Mediagxxx, and
9 its respective website template and script, or what country this company was based out of. YMP
10 obtained the Mediagxxx website script and template on behalf of ThisAV.com from its workspace
11 in Hong Kong.

12 32. The Mediagxxx template contained the links to “DMCA” and “2257” found at the
13 bottom of the ThisAV.com site, which is why those links are present on the website.

14 33. Neither YMP nor ThisAV.com own any United States Copyrights. At the bottom
15 of the pages of ThisAV.com, the following statement is listed: “版權 © 2009-2021 ThisAV.com -
16 世界第一中文成人娛樂網站, 保留所有權利” Despite this statement containing the “©” symbol,
17 YMP does not hold any United States Copyrights, rather, this statement was included in the
18 Mediagxxx website script template.

19 34. On behalf of YMP, a YMP representative registered the domain name of
20 ThisAV.com with GoDaddy.com, a domain name registrar. This representative registered the
21 domain name of ThisAV.com with GoDaddy on behalf of YMP from his workspace in Hong
22 Kong.

23 35. On behalf of YMP, a YMP acquired the privacy services of Domains by Proxy,
24 LLC, for ThisAV.com. Domains by Proxy, LLC provides common privacy tool for domain

1 name registrants on the internet. Acting on behalf of YMP, this representative acquired the
2 privacy tools service from Domains by Proxy, LLC from his workspace in Hong Kong.

3 36. I understand that Domains by Proxy, LLC is a commonly used privacy tool for
4 domain name registrants. According to the Wikipedia page for “Domains by Proxy,” over
5 9,850,000 domains used the Domains by Proxy service in 2014. A link to this Wikipedia page is
6 here: https://en.wikipedia.org/wiki/Domains_by_Proxy.

7 37. YMP does not have contractual relationships with Youtube, LLC or Facebook
8 LLC.

9 38. Many, if not most of the titles of the videos uploaded to ThisAV.com are in
10 Japanese. I would estimate approximately 70% of videos on ThisAV.com are in Japanese or
11 have Japanese titles.

12 39. ThisAV.com is free to use. Accordingly, no users from the United States
13 (including in Washington), or anywhere else for that matter, make any payments to YMP for
14 using ThisAV.com or for viewing any videos therein.

15 **Advertisements on ThisAV.com**

16 40. All revenue derived from ThisAV.com comes from advertisements.

17 41. Virtually all of ThisAV.com advertisements come from YMP’s relationship with
18 three advertising brokers, Tiger Media, Inc. d/b/a JuicyAds, a Canadian corporation registered in
19 Saskatchewan (“JuicyAds”), Tomksoft S.A. d/b/a PopAds which is a Costa Rican joint stock
20 company (“PopAds”), and ExoClick, S.L. d/b/a ExoClick which is a Spanish company based in
21 Barcelona (“ExoClick”). YMP does not have any direct relationship with the end-advertisers
22 (the advertisers whose ads appear on ThisAV.com) that are acquired by JuicyAds, PopAds, or
23 ExoClick. Instead, JuicyAds, PopAds, or ExoClick, have the direct relationship with these end-
24 advertisers. Moreover, YMP contracted with these aforementioned advertising brokers from its

1 workspace in Hong Kong. ThisAV.com makes available to the broker “space” on ThisAV.com,
2 and the broker then sells that spaces as it sees fit to its advertiser clients. An advertiser buys
3 (from the broker) the right to display whatever advertisements it chooses in the space provided
4 on ThisAV.com as long as it complies with law and the broker’s rules.

5 42. On one occasion, YMP reached an agreement with an individual advertiser from
6 Hong Kong to have an advertisement placed on ThisAV.com, but this was in no way directed
7 toward the United States.

8 43. YMP does not cause any specific advertisements to be directed to visitors from
9 specific locations (such as Washington or the United States).

10 44. However, advertising brokers, or their advertisers, might themselves be interested
11 in only serving advertisements to specific blocks of countries or to show specific advertisements
12 in specific places. In other words, although it is possible for an advertiser to have its
13 advertisements be targeted to viewers in a specific country or an even more limited geographic
14 area, any “geolocation” or “geo-targeting” is performed (when it is performed at all) by the
15 brokers themselves (or their advertisers) and not by YMP or anyone else on YMP’s behalf.

16 45. Although the advertising broker may allow its advertisers to choose which
17 specific country their advertisements are displayed, that process, if it takes place at all, happens
18 before the broker places the advertisements on ThisAV.com and without any input from YMP or
19 anyone on YMP’s behalf.

20 46. The process for “interest-based targeting” of advertisements is completely in the
21 control of the brokers and their advertisers.

22 47. The geolocation/geo-targeting and interest-based targeting of advertisements
23 mentioned herein are not advertisements of ThisAV.com, but rather they are advertisements
24 promoting the products or services of the advertisers themselves. Advertisements that appear on

1 ThisAV.com link to third-party websites.

2 48. In other words, YMP is not advertising ThisAV.com into the United States (or
3 Washington) by virtue of these advertisements.

4 49. In fact, ThisAV.com is not advertised at all – whether within the United States or
5 elsewhere.

6 50. ThisAV.com does not has an option available on the website which allows for
7 direct advertisement inquiries. Rather, ThisAV.com provides the contact information for its
8 Canada based advertising broker, JuicyAds.

9 51. YMP does not have any contractual relationships with StackPath, LLC, or Multi
10 Media LLC.

11 **Users of ThisAV.com**

12 52. ThisAV.com has visitors from over 200 distinct countries around the world.

13 53. ThisAV.com utilizes a service from histats.com, a website visitor analytics
14 service. Histats.com, among other things, tracks the number of visitors to a website and the
15 country from which the visitor is accessing the website based on the IP address of the visitor.
16 The histats.com service is free to use.

17 54. According to the histats.com website, histats.com is owned by Wisecode SRL, an
18 Italian company.

19 55. On behalf of YMP, a YMP representative signed up ThisAV.com for the
20 histats.com service from his workspace in Hong Kong.

21 56. From the period of April 1, 2020 through June 30, 2020 (the “Time Period”),
22 according to histats.com, only approximately 4.6% of the user traffic of ThisAV.com came from
23 the United States. Attached hereto as Exhibit 1 is a true and correct sampling of data gathered
24 through histats.com from the Time Period showing the number of users from countries around

1 the world in respect to the ThisAV.com website.

2 57. As you can see from these statistics, during the Time Period only 4.6% of the
3 users came from the United States. Indeed, more ThisAV.com users came from Japan (52.5%),
4 Taiwan (15.7%) and Hong Kong (15.4%) than the United States during the Time Period.

5 58. This means that approximately 95.4% of ThisAV.com uses came from outside of
6 the United States during the Time Period.

7 59. Moreover, from the one-year period of March 1, 2020 through February 28, 2021,
8 only approximately 3.9% of the user traffic of ThisAV.com came from the United States. This is
9 an even smaller percentage then during the Time Period. Attached hereto as Exhibit 2 is a true
10 and correct sampling of data gathered through histats.com from the one-year period of March 1,
11 2020 through February 28, 2021 showing the number of users from countries around the world
12 in respect to the ThisAV.com website. As you can see, during this one-year time period, more
13 ThisAV.com users came from Japan (54.1%), Taiwan (15.8%) and Hong Kong (15.7%) than the
14 United States.

15 60. Users of ThisAV.com do not need to create an account, register, or sign in to
16 view videos on ThisAV.com.

17 61. To sign up for an account, a user does not need to verify what country he or she is
18 visiting from. Rather, a user needs to create a username and password, submit and verify an
19 email address, and certify that he or she is at least 18 years old.

20 62. Users of ThisAV.com need to sign up for a free account as described above in
21 order to upload videos.

22 **Miscellaneous**

23 63. YMP is adequately capitalized.

24 64. It would be burdensome and costly for representative of YMP to travel to

1 Washington for trial or other proceedings in this case.

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1 I declare under penalty of perjury that the foregoing facts are true and correct to the best of my
2 knowledge.

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4 Executed on March 7, 2021.

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7 Youhaha Marketing and Promotion Limited
8 By: Janus Tam
9 Title: Secretary
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DECLARATION OF JANUS TAM, ON BEHALF OF YOHABA MARKETING AND PROMOTION
LIMITED, IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS